Australian Government
Department of the Prime Minister and Cabinet

Office of Deregulation – Guidance Note

REGULATION AUDIT – STAGE TWO

As at 16 June 2014

This guidance follows the Regulation Audit Stage One Guidance Note released by the Office of Deregulation on 14 February 2014.

Sampling and costing

The Government requires that portfolios conduct an audit of all regulations to estimate the compliance burden of all existing regulation. This involves determining the stock of regulation by cataloguing the primary acts, subordinate instruments and quasi-regulation administered by each portfolio (Stage One) and then estimating the burden of these regulations (Stage Two) using the Regulatory Burden Measurement (RBM) framework. The audit will provide an opportunity to highlight portfolios' reform opportunities and priorities.

By the end of Stage One (due 30 June 2014) portfolios will have catalogued all frameworks they administer and placed them in the burden categories, segmenting frameworks into groups of similar (low, medium or high) burden. As in the Australian Government Guide to Regulation, burden is defined as the effect of government regulation, in terms of the cost imposed, on business, community organisations and individuals.

This guidance note will refer to 'frameworks' (in place of 'regulation') for simplicity as the term 'frameworks' applies to any manner in which a portfolio's stock of regulation is grouped rather than just to individual regulatory measures. Frameworks can refer to groups of quasi-regulations, groups of subordinate instruments and quasi-regulations, individual subordinate instruments, multiple pieces of primary legislation or even some combination of these. As discussed in the Stage One Guidance Note and in 'Cutting Through' Issue Two, the cataloguing and categorisation process can be at the framework level, with legislation, regulation and quasi-regulation considered in packages, as appropriate.

As outlined in the Cross-portfolio Guidance Note, frameworks may be apportioned into a 'nil cost' burden category. Frameworks within the 'nil cost' burden category will not be sampled from or costed, and will only affect the count of regulation reported in Stage One.

Portfolios are asked to provide interim costing results to PM&C by mid-September.

The full audit, including costings and the consultations with your portfolio's Ministerial Advisory Council (MAC), should be completed and reported to PM&C before 1 December 2014.

Stage Two: Determine the total cost of regulation administered.

1. Determine the regulatory cost imposed on business, community organisations, and individuals of all regulation administered in your portfolio.
2. Submit interim costings to PM&C for analysis.
3. Test results with Ministerial Advisory Councils (MACs) or other equivalent consultative bodies and carry out internal quality assurance as necessary.
4. Report final audit results to PM&C. Further guidance is being developed as to how and when the Government intends to report this information to the public.

1. Determine the cost of regulation in your portfolio.

There are two ways to determine the cost of regulation in each portfolio, either to cost all frameworks or select a representative sample from the population of frameworks. While the first option is the most rigorous, we understand that this is not practical for many portfolios. It is unlikely that many portfolios will have a small enough stock of regulation for this to be feasible within existing resources. We expect that portfolios will therefore prefer to take the second approach.

The purpose of dividing the stock of regulation in each portfolio into three categories is, in part, to increase the accuracy of a sampling process.

Portfolios should consult with other portfolios where there is overlap in regulation to assist in the completion of Stage Two (see the Guidance Note on Cross-portfolio Regulation for further information).

Sampling, costing and generalising process

i. Take a sample from each of the high, medium and low burden categories;
ii. Cost the frameworks within each sample in their entirety;
iii. Determine the average cost of the frameworks within each sample;
iv. Generalise this to the relevant burden category (population) by multiplying by the number of frameworks within that category; and
v. Generalise these results to the entire whole portfolio stock of regulation by summing the total burden calculated for each category.

In order to ensure rigour and defensibility of the sample generalisation to a population, it is important that the sample selected and costed is appropriately large. Portfolios will need to balance the need for rigour (which is likely to be affected by selecting too small a sample) with the resourcing implications of costing many frameworks.

It is important to note that portfolios should be able to cost frameworks in their entirety. That is, if a framework is selected as part of a sampling process, the entire framework should be costed in accordance with the RBM.

The alternative where sampled frameworks are not costed in their entirety and instead components are selectively costed may result in the sample not being representative of the population. We advise against this approach as this would limit the ability for sample results to be generalised to the entire stock of regulation.

Approaches to sampling

Portfolios are free to determine a sampling strategy based on their own circumstances so long as portfolios consider their approach to be defensible. PM&C considers that a randomised sampling approach within each category is the most defensible and provides an appropriate degree of rigour. We ask that the Office of Deregulation is kept informed of your approach to sampling and progress in Stage Two. This will enable PM&C to continue providing timely, general guidance to portfolios on emerging common issues, either in the form of guidance notes or through the ‘Cutting Through’ newsletter.

*Cost a **random** sample*

In this context, ‘random’ refers to all frameworks having an equal likelihood of selection for inclusion in the sample - the probability of selection of any one framework is the same as any other. The Office of Deregulation can provide advice on techniques to generate a random sample. Where a random sample is taken, a larger sample size should result in a higher degree of accuracy.

In some instances a random sampling strategy may not be possible, such as where some frameworks cannot be costed. Where this is the case, a non-random sampling strategy may be the only option unless a different approach to framework design is taken. The following section outlines the main aspects and risks involved in this strategy.

*Cost a **non-random** sample*

Though a non-random sample can be obtained through a variety of mechanisms, only the 'convenience' sampling or 'purposive' sampling approaches are relevant for the regulation audit.

- Convenience sampling involves selecting frameworks based on ease, such as the expected effort involved in costing. Such strategies may risk the introduction of a substantial sample bias. This means that the frameworks captured in the sample may not be broadly similar and representative of the frameworks in the burden category.
- The risks surrounding the use of a purposive sampling strategy are similar. Purposive sampling (or judgemental sampling) is where sampling intentionally selects a portion of the population that is considered more relevant or desirable for analysis, based on its characteristics. While this may produce insight into the frameworks sampled, it does not assist in understanding properties (such as regulatory impact) of the overall population.

2. Report interim costing results

Interim costing results of your sample (or entire stock if you are not sampling) should be provided to PM&C in mid-September.

The costings you provide will not be used externally and are not considered formal reporting. We will conduct preliminary analysis to determine how costings across government align with expectations and to ensure that any potential risks are identified as early as feasible.

Your PM&C contacts can discuss this with you and determine a suitable submission date based on your regulatory costing processes. We understand that portfolios may not have fully completed their costings and we can discuss directly with portfolios what is feasible within this timeframe. Portfolios are able to pursue this step concurrently with their MAC consultations.

3. Test costing results with MACs and determine the total portfolio regulatory costs

Deregulation Units are responsible for quality assurance of costings prepared in their portfolio and for the methods used and results produced for the portfolios. As there is an election commitment to publicly release the results of the audit, it is important that portfolios are confident in their results and stand by their quality.

Additionally, the Government has agreed that portfolios should test the overall results of the audit, including the costings, with MACs or other equivalent consultative bodies to ensure that the results are credible to external stakeholders. The mechanism that portfolios use to take this forward to their MACs and the appropriate timeframes should be decided at the portfolio level. This should be completed well in advance of the 1 December 2014 deadline.

It will be important for portfolios to effectively communicate what the burden categories represent when discussing the regulation audit with their stakeholders and MACs. The categories and costings are not intended to reflect what the 'excessive' burden of these frameworks is, but instead the overall compliance burden on the businesses, community organisations, and individuals.

4. Report audit results

Portfolios will submit the final results of their audit to PM&C before 1 December 2014. Advice on the form this should take will be provided.

Additionally, separate advice will be provided on how results of the audit will be publicly reported.